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May 25, 1983

Letter Report P-307

Honorable Art Agnos
Chairman, and Members of the
Joint Legislative Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

We have reviewed the Fair Political Practices Commission's (commission) activities in carrying out the provisions of the Political Reform Act of 1974 (act). The objectives of our review were to update our 1977 report entitled "Efficiencies and Economies of the Administration of the Political Reform Act of 1974" and to determine whether a complete and detailed review of the commission's current activities is warranted. In addition, we have reviewed certain commission activities to determine if the commission is complying with the act's statutory requirements and with the commission's own administrative guidelines.

The commission has fully implemented 13 of the 15 recommendations contained in our 1977 report, and it has selected cost-effective alternatives for the remaining two. Moreover, we found that the commission is complying with major provisions of the act for the selected activities that we reviewed. We also found that the commission's activities correspond to the commission's own guidelines for administering the act. Based on our limited review, we have concluded that further audit work is not required at this time.

BACKGROUND

The Political Reform Act was a ballot issue passed by the voters in 1974. The act established the Fair Political Practices Commission, which began operations in January 1975. The commission is unique in its autonomy and independence from the legislative and executive branches of the state government. The act authorized a budget of one million dollars, plus cost-of-living increases to the commission.

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The commission is responsible for administering and implementing the Political Reform Act. The intent of the act is to ensure full and truthful disclosure of receipts and expenditures in election campaigns, to regulate activities of lobbyists and to require disclosure of their finances, to require disclosure of assets and income of public officials that may be materially affected by their official actions, to disqualify officials from acting in circumstances where a conflict of interest may exist, and to provide adequate enforcement mechanisms applicable to public officials and private citizens governed by the act.

To meet its responsibilities under the act, the commission adopts, amends, and rescinds rules and regulations for carrying out the purposes and provisions of the act. In addition, the commission has a number of other duties under the act including: prescribing standard forms for reports, statements, notices, and other documents required by the act; preparing manuals and instructions to facilitate compliance with and enforcement of the act; providing opinions and written advice with respect to a person's duties under the act; providing recordkeeping and reporting assistance to agencies and public officials; and maintaining a central file of local campaign contribution and expenditure ordinances. The commission also investigates possible violations of the act, conducts hearings on violations and imposes sanctions against violators, and provides assistance to state and local agencies in preparing conflict of interest codes.

The commission consists of five members, all of whom are appointed by state elected officials. The Governor appoints the chairman and one other member. The Attorney General, the Secretary of State, and the State Controller each appoint one member to the commission. The commission's budget for fiscal year 1982-83 is approximately \$1.8 million, provided from the State's General Fund. The budget authorizes a support staff of 47 employees.

The commission's support staff is organized into four divisions: the Enforcement Division, the Legal Division, the Technical Assistance and Analysis Division, and the Administration Division. Each division is supervised by a director who reports to the commission's executive director. A General Counsel also reports to the executive director. The Enforcement Division promotes compliance with the act, attempts

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to deter violations of the act, and initiates appropriate punishment of those who do violate the act. The Legal Division manages the conflict of interest aspects of the act and provides legal and policy analyses on various aspects of the act and California's political system. The commission's Technical Assistance and Analysis Division produces summaries and analyses of campaign, lobbying, and financial interest data and provides training and assistance to those governed by the act. The Administration Division directs the commission's internal administrative functions.

In 1977, the Auditor General contracted with the accounting firm of Arthur Andersen and Company to conduct an audit of the State's implementation of the Political Reform Act. The audit, which focused on the Fair Political Practices Commission, the Secretary of State, the Attorney General, and the Franchise Tax Board, disclosed that changes should be made in the commission's enforcement activities, in the commission's assistance to persons governed by the act, and in the act itself. These changes involved the commission's four divisions and the commission's General Counsel.

SCOPE AND METHODOLOGY

Although our earlier report addressed four agencies, this review is limited to the activities of the commission. We focused our review on the commission's implementation of the 15 recommendations cited in our previous report. We reviewed the Enforcement Division's progress in implementing six of our fifteen recommendations, the Legal Division's progress in implementing two recommendations, the Technical Assistance and Analysis Division's progress in implementing three recommendations, the commission's progress in implementing our recommendation regarding clerical staff, and the General Counsel's response to three recommendations for amending the act. We also reviewed selected activities of the Enforcement and Legal divisions to determine if the commission is complying with both the act and the commission's own guidelines, and to determine if further audit work is required.

To conduct this review, we observed and documented the commission's internal procedures for administering and implementing the provisions of the act. We also interviewed the directors of the four divisions to determine if the commission implemented the recommendation to assess the

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adequacy of clerical staff periodically. Finally, we interviewed the commission's General Counsel to determine if the commission implemented our three recommendations for amending the act. (An appendix summarizes our recommendations and the corrective actions the commission has taken.)

To determine the commission's compliance with provisions of the act and with its own guidelines, we tested the commission's procedures for processing violations and complaints, requests for advice, and Statements of Economic Interest.

ANALYSIS

In the following sections, we discuss the implementation of our 1977 recommendations by each division of the Fair Political Practices Commission and by the General Counsel. In addition, we report the results of our tests of compliance of the Enforcement and Legal divisions.

Enforcement Division

Our 1977 audit report recommended that the commission increase its enforcement activities by pursuing cases involving significant violations of the Political Reform Act and by developing warning letters to be sent in response to minor violations. We also recommended that the commission increase its enforcement staff to handle increased workloads, use administrative hearings in lieu of civil prosecution, and develop a plan for conducting its audits of candidates for State Controller and for the Board of Equalization. Additionally, we advised the commission to inform the Franchise Tax Board (FTB) of investigative actions taken as a result of the FTB audits and to participate in the establishment of levels of materiality for FTB audits. The commission's Enforcement Division has implemented each of these six recommendations.

The division has implemented procedures to ensure that the commission pursues significant violations and that it does take action in response to minor violations. For example, the division has devised a standard instrument for determining the severity of each violation. When reviewing FTB and commission audit reports, the division staff use a scoring sheet to assign to the case a numerical value corresponding to the nature and

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severity of the violation. The director of the Enforcement Division reviews the cases and the scoring sheets and decides if a case should be pursued further or dropped, or, if the violation is minor, if a warning letter should be sent. In cases that result in the sending of warning letters or in more stringent actions, the division enters the information in the commission's computer for consideration in subsequent violations.

As a result of instituting improved procedures for pursuing violations and increasing its investigative staff (our second recommendation), the commission has significantly increased the number of "matters" it has processed.* The commission increased the number of enforcement positions from six in 1977 to ten in 1983. The director indicated that the improved procedures and increased staffing have enabled the division to more than double the number of matters it processed. For example, from 1975 through 1978, the division closed 507 matters. By comparison, from 1979 through 1982 it closed 1,463 matters. Additionally, the amount of fines levied for violations of the act has increased from approximately \$38,000 levied prior to 1979, to approximately \$168,000 levied from 1979 through 1982.

The division has also implemented our third recommendation to use administrative hearings in lieu of civil prosecutions. Section 83116 of the act authorizes the commission to hold hearings and impose fines up to \$2,000 for each violation. Since 1979, the commission has processed 39 cases involving significant violations through administrative hearings. The commission prosecuted only one case through the civil court.

Our fourth recommendation to the Enforcement Division pertained to audit procedures. The Political Reform Act requires the commission to select by lot the persons or districts to be audited. The act further directs that, with two exceptions,

* The Enforcement Division uses the term "matter" to identify workload cases. Matters include the processing of FTB audit reports, complaints, and self-generated enforcement cases. Other matters include such actions as monitoring local prosecution of violations of the act.

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the FTB shall perform the audits and field investigations. The act requires the commission, rather than the FTB, to audit candidates for the Office of the State Controller and candidates for the Board of Equalization. We recommended that the commission develop both a plan and detailed audit procedures for the audits that it conducts. The division has implemented our recommendation by designating an accountant who plans, schedules, and performs the commission's audits. Also, the division participated in the development of detailed audit guidelines for both the FTB and the commission.

The division has adopted our fifth recommendation to inform the FTB of the commission's use of FTB audit reports. The commission responds to FTB audit reports by sending a letter that indicates the actions taken, or to be taken, on each report. Additionally, when further investigation is required, the investigator discusses the case with the FTB auditor. Moreover, the director of the division has designated a liaison officer to assure, among other things, that such information is provided.

Finally, the division has adopted our recommendation to have the commission participate with the FTB in identifying issues of "materiality" to be used in FTB audits. Materiality refers to seriousness of errors or omissions in a report or statement. An error or omission is material if it significantly affects recordkeeping or disclosure. FTB audit reports disclose such errors or omissions, and may also include a reference to the existence of nonmaterial errors although the audit report need not itemize specific nonmaterial errors. The commission formally addressed the issue of materiality in one of its regulations and in its audit guidelines. Also, the division's chief investigator and liaison officer stated that the commission has maintained communication with the FTB on the subject of materiality. These officials also indicated that materiality is a major concern in the various FTB internal reviews that the audit reports receive before the FTB sends the reports to the commission.

In addition to determining if the Enforcement Division has complied with the recommendations in our previous report, we assessed the division's compliance with selected enforcement provisions of the act. Specifically, we examined the division's procedures for investigating and processing

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violations and its performance in responding to complaints within time limits specified in the act. To assess the effectiveness of its procedures for processing violations, we selected 10 of the 39 cases that have gone to commission hearings and have been closed since 1979 to determine if the commission is fining violators of the act. We found that 9 of the 10 cases resulted in violators' paying fines ranging from \$500 to \$2,000; one violator was not fined. Only one individual committed a subsequent violation, which was minor.

We also examined the division's procedures for responding to formal complaints to determine if the division has responded to complaints within the 14-day limit as required by the act. The division exceeded the mandated 14-day limit for 2 of the 17 formal complaints it received from 1980 to 1983. Both complaints were received in 1980. The average response time for the 17 complaints was approximately six days.

Legal Division

The Political Reform Act states that "no public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." To help prevent the occurrence of decisions involving a conflict of interest, the act requires that public officials file Statements of Economic Interest that discloses their investments, interests in real property, and income. The commission's Legal Division is responsible for managing the conflict of interest provisions in the act.

Our 1977 report contained two recommendations pertaining to the commission's Legal Division: we suggested that the division inform state and local public officials of their potential conflicts of interest, and that it require review of Statements of Economic Interest by local filing officers. The commission has fully implemented the two recommendations.

The commission informs state and local officials of potential conflicts of interest by wide distribution of pamphlets that describe California's conflict of interest law for public officials. The commission also periodically publishes commission bulletins that discuss, among other things, conflict

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of interest issues. In addition, it has published annual newsletters and provided written advice to inform individuals of the act's requirements. It has also conducted educational seminars and sent periodic updates to local filing officers.

In implementing the second recommendation in 1978, the commission changed its regulations to require reviews of Statements of Economic Interest by local filing officers. Local filing officers receive and retain the original Statements of Economic Interest in order to determine whether there has been adequate disclosure. Through periodic audits, the commission assesses the performance of the local filing officers.

We also examined the Legal Division's compliance with three requirements contained in the act and found the division to be in compliance. One of the act's requirements stipulates that any individual governed by the act may request from the commission a written answer to questions concerning potential conflicts of interest. The act mandates that the commission provide written advice with respect to a person's duties under the act within 21 working days of the request, with the added stipulation that the time may be extended for good cause. We reviewed all 40 requests received and processed by the division from July 1, 1982, to February 22, 1983. The average time for processing the 40 requests was approximately 17 days. However, we found that the division had exceeded the time limit for 10 of the 40 requests.

We eliminated one of these late responses because the request concerned a new bill that had not yet been passed. The commission's staff reviewed the remaining nine cases and determined that for seven requests the division had to obtain additional information, thus justifying the additional time required beyond the 21-day limit. The commission did answer these seven requests within 21 working days from the time the additional information was received. The remaining two requests did not require additional information. The staff attributed the delay in responding to these two requests to a temporary increase in workload and to the absence of an advisor who was on maternity leave.

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In addition to setting a time limit for answering requests for advice, the act mandates that, within 14 days of a request for a formal opinion, the commission either issue a legal opinion or tell the person who made the request whether an opinion will be issued. We examined the Legal Division's record in responding to requests for opinions and found that for the 14 requests for opinions received since 1979, the division exceeded the time limit in one opinion. In that one opinion, requested in 1980, the division exceeded the allowable time by two days.

A third area of the Legal Division's compliance with the act pertains to the commission's responsibilities in regard to Statements of Economic Interest. The act requires candidates for state offices, elected state officials, members of the Legislature and the Board of Equalization, members of the Public Utilities Commission, members of planning commissions, judges, and others, to file Statements of Economic Interest with the commission every year. About 17,000 persons file these statements directly with the commission. In its function as the "filing officer" for these persons, the commission is required to determine whether these persons have filed Statements of Economic Interest and whether the statements conform with the requirements of the act. The commission must also notify all individuals who have failed to file their Statements of Economic Interest in the form and at the time required by the act. Government Code Section 91013 sets forth general standards for waiving or imposing fines for persons who file late.

Using the Government Code and guidelines adopted by the commission, we determined that the commission was performing its duties as prescribed. We sampled 41 of the 941 cases of persons who were late in submitting their Statements of Economic Interest. The commission fined 24 of the 41 persons who filed late; 7 paid part or all of their initial fines, one case was referred to the Enforcement Division for further action, and the remaining 16 fines were subsequently waived by the commission. We also found that the commission mistakenly did not fine one of 41 who filed late. In waiving the fines and not fining the remaining persons, the commission correctly followed its guidelines.

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Technical Assistance and Analysis Division

Our 1977 report directed three recommendations to the Technical Assistance and Analysis Division. We recommended that this division distribute accounting fact sheets on bookkeeping and record requirements to each campaign committee treasurer, increase staff to provide reviews of campaign recordkeeping practices when requested to do so, and use the FTB data processing system to produce the division's campaign analysis reports.

The division has developed a recordkeeping manual for campaign committees. The manuals are distributed in the following ways: the Secretary of State mails the manuals to all treasurers of state campaigns and sends a form outlining its availability to all local campaign treasurers; the Secretary of State also sends copies of the manual to local filing officers for further distribution; and the division presents and discusses the manual at its educational seminars. Furthermore, anyone can request and receive a copy of the manual.

The division has partially implemented our second recommendation to hire additional staff to assist those who request that the commission review their recordkeeping practices. The division has designated three consultants for recordkeeping reviews. However, because 99 percent of the requests for assistance can be satisfied by direct discussion with the requester, the director of the division has determined that there is no need to expand the recordkeeping reviews. He also observed that expanding the recordkeeping reviews would not be cost effective because of the travel and time involved.

Finally, our 1977 report recommended that the division use the FTB's data processing system to produce the division's campaign analysis reports. We found that the commission does not use the FTB system, but that it has selected a cost-effective alternative by acquiring its own computer. The commission determined that it could purchase a computer system for less than the cost of modifying the FTB system to produce the reports.

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Administration

In our previous report, we also recommended that the commission periodically review its clerical staffing to address the distribution of workload. While the commission has not formally performed such an analysis, it has complied with the intent of the recommendation by informally evaluating the clerical workload. For example, the commission evaluates vacant positions as they occur to determine if they need to be filled. In 1977, the commission had 16 clerical staff positions. By comparison, in March of 1983, the clerical positions totaled 14. The commission's four division directors stated that their current clerical staff levels are adequate.

General Counsel

In our 1977 report, we recommended that the commission request that the Legislature amend the act by extending the two-year statute of limitations for prosecuting violators of the act; introducing random selection for FTB audits rather than audit 100 percent of the lobbyists, candidates, and committees; and finally, changing the filing periods for lobbyists from monthly to quarterly. The commission's General Counsel made these recommendations to the Legislature, and the Legislature subsequently adopted statutes implementing the recommendations.

CONCLUSION

The Fair Political Practices Commission has fully implemented 13 of the 15 recommendations in our 1977 report. It has also achieved the objectives of the remaining 2 recommendations by selecting alternatives that are cost effective. Our review of certain commission activities disclosed no significant deficiencies, and we determined that the commission's activities correspond to the objectives of the Political Reform Act. We conclude, therefore, that further audit of the Fair Political Practices Commission is not necessary at this time.

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We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specifically contained in the audit request.

Respectfully submitted,



THOMAS W. HAYES
Auditor General

Audit Completion Date: May 23, 1983

Staff: Thomas A. Britting, Audit Manager
Murray Edwards
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Attachments: Response to the Auditor General's Report
Fair Political Practices Commission
Appendix

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

May 17, 1983

Thomas W. Hayes
Auditor General
600 J Street
Sacramento, CA 95814

Dear Mr. Hayes:

We have reviewed your draft report dated May 13, 1983, regarding the performance of the Fair Political Practices Commission. We are most gratified that after your careful and thorough review of the Commission's activities, you have concluded that the Commission is doing an effective and efficient job of implementing the requirements of the Political Reform Act.

Of the fifteen recommendations made in the 1977 Arthur Andersen audit report, you concluded that thirteen were fully implemented and that the other two were fully implemented through more cost effective measures. You also reviewed other major aspects of the Commission's activities to see if the Commission was implementing the provisions of the Political Reform Act as well as its own administrative guidelines. Since you found that the Commission was complying with the Act and guidelines, no further audit was warranted.

We take great pride in the findings of this report since it confirms the fact that the Commission has been a responsive and responsible government agency, successfully carrying out the provisions of the Act. The Commission has always strived to perform its duties in a non-partisan, objective fashion and we think your report is testimony to the successful accomplishment of that end. We believe that these accomplishments are particularly noteworthy in light of the fact that the Commission's activities are performed in the highly charged arena of politics, under the watchful eyes of both the press and those whom we regulate.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ted Prim".

Ted Prim
Executive Director

SUMMARY OF CORRECTIVE ACTIONS TAKEN BY
THE FAIR POLITICAL PRACTICES COMMISSION
IN RESPONSE TO THE RECOMMENDATIONS CONTAINED IN
THE AUDITOR GENERAL'S 1977 REPORT

<u>Recommendation</u>	<u>Action</u>
1. Pursue significant violations and develop a warning letter to be sent in response to minor violations. (See page 4 of the current report.)	The commission has developed an evaluation system and procedures for ensuring that the Enforcement Division pursues significant violations; for minor violations, the commission sends the violator a warning letter.
2. Increase investigative staff to accomplish enforcement tasks. (See page 5)	The commission increased investigative staff from six positions in 1977 to ten positions in 1983.
3. Use administrative hearings in lieu of civil prosecutions. (See page 5)	Since 1979, the commission has prosecuted 39 cases of significant violations through administrative hearings and one case through civil court.
4. Develop a plan and detailed audit procedures for the commission's audits of candidates for the State Controller and Board of Equalization. (See page 5)	The commission developed procedures and a detailed audit guide for use by both the Franchise Tax Board (FTB) and the commission in conducting audits.
5. Provide information to the FTB on the commission's use of FTB audit reports. (See page 6)	The commission provides formal responses after the initial review of the FTB audit reports. Informal communication occurs between the commission investigators and FTB auditors, and the commission has designated a liaison officer to ensure communication.
6. Participate in establishing levels of materiality for FTB audits. (See page 6)	The commission has implemented a regulation concerning materiality and participated with the FTB in developing an audit guide that addresses materiality. Also, the commission has maintained communication with the FTB on the subject of materiality.

<u>Recommendation</u>	<u>Action</u>
7. Inform state and local officials of their potential conflicts of interests. (See page 7)	The commission widely distributes pamphlets, bulletins, and newsletters, conducts about 15 seminars each year, and provides written advice and opinions to individuals.
8. Require local reviews of Statements of Economic Interest. (See page 8)	Changes to the regulations were adopted in 1978 requiring local filing officers to perform detailed review of the Statements of Economic Interest. The commission periodically audits filing officers to ensure conformance.
9. Distribute accounting fact sheets to campaign committees. (See page 10)	The commission has developed a recordkeeping manual and provides it to applicable committees. Anyone may request a copy of this manual.
10. Add staff and expand recordkeeping review capabilities. (See page 10)	The commission provides recordkeeping reviews when requested but has not requested additional staff because of the low volume of requests for recordkeeping reviews.
11. Use the FTB data processing system to produce the campaign analysis reports. (See page 10)	The commission selected a more cost-effective alternative by acquiring its own computer system.
12. Periodically address the distribution of clerical workload. (See page 11)	The commission informally assesses workload distribution and fills vacated positions as needed. Clerical staff has declined from 16 in 1977 to 13 positions in 1983.
13. Extend two-year statute of limitation for prosecuting violators of the act. (See page 11)	The commission recommended that the Legislature extend the statute of limitations. The Legislature extended the limitation from two years to four years.

<u>Recommendation</u>	<u>Action</u>
14. Introduce random selection of FTB audits rather than 100 percent. (See page 11)	The commission recommended random selection to the Legislature. The Legislature adopted the recommendation.
15. Change the filing periods for lobbyists from monthly to quarterly. (See page 11)	The commission recommended quarterly lobbyist filing to the Legislature. The Legislature adopted the recommendation.